THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No. 6845 of 2000

Dated: 14.11.2007

Between:

Salabath Khan and others.

... Petitioners

AND

Government of A.P., rep., by its
Secretary, Municipal Administration Dept.,
Secetariat Buildings, Hyderabad
& others.

... Respondents

Counsel for the petitioners : Sri P.V. Narayana Rao

Counsel for respondent No.2 : Sri J. Kanakaiah
SC for Municipal Corporation,
Karimnagar.

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION No. 6845 of 2000

ORDER:-

This writ petition is filed for a writ of mandamus to direct the respondents to initiate proceedings under Land Acquisition Act, 1894 (for short, 'the Act') in respect of Ac.1.14 guntas of land in Sy.Nos.1166/A and 1168 situated at Jyothinagar, Karimnagar Town, Karimnagar District, belonging to the petitioners through which a road was laid in the year 1981-82.

Petitioner No.1 is the father of petitioner Nos.2 and 3. It is averred in the affidavit filed in support of the writ petition that the wife of petitioner No.1 died leaving behind her petitioner Nos. 1 to 3 as her legal heirs entitled to succeed to her properties, that petitioners are the owners of land admeasuring Ac.7.07 guntas in Sy.No.1166/A and Ac.2.06 guntas in Sy.No.1168 of Karimnagar Village, that the name of respondent No.1 is recorded as owner and Khabzidar in the Khasra Pahani of 1954-55. Petitioner No.1 and his wife filed Writ Petition No.8596 of 1992 in this Court for the same relief, which is sought for in the present writ petition and this Court in its order dated 16.02.1993 gave a finding that the report of the Assistant Director of Survey and Settlement shows that the road is passing through the petitioners' land and directed them to make a representation before respondent No.3 to conduct an enquiry as to whether the road in question passes through their land and that in case if it is found so, respondent No.3 shall initiate proceedings under the Act within a period of four months.

Purporting to act in compliance with the said order of this Court, respondent No.3 issued memo dated 23.11.1993, wherein the claim of the petitioners' for payment of compensation by initiating land acquisition proceedings was rejected. The petitioners filed contempt case in C.C.No.292 of 1994, which was dismissed on 08.11.1996 and an application filed to restore the contempt case was disposed of on 27.08.1998, giving liberty to the petitioners to file a separate writ petition to question memo dated 23.11.1993 passed by respondent No.3. The present writ petition is filed questioning the said memo.

Sri M. Mallesham, Municipal Commissioner of Karimnagar Municipal Council filed a counter-affidavit. Respondent No.3, whose rejection order is challenged in the writ petition, however, has not filed any counter-affidavit. In his counter-affidavit, the Commissioner mainly raised a plea that under Sections 184 and 185 of the Andhra Pradesh Municipalities Act, 1965 it is obligatory on the part of the owner of the land who intends to utilize or sell his land for building purpose to pay to the municipality such conversion fee as prescribed before forming a layout and that land in Sy.Nos.1166/A and 1168 were already converted into house plots without getting any sanction and paying any conversion fee to the municipality. It is further averred that the municipality is not liable to pay any compensation in respect of the existing private or public streets and the roads formed while selling the house plots. He, however, admitted in paragraph 9 that in pursuance of the order passed by this Court in Writ Petition No.5630 of 1980, an extent of 287 square yards comprised in Sy.No.1115/A belonging to Md. Dulekhan in T.P.No.11/1970 was acquired by invoking the provisions of the Act and compensation at the rate of Rs.135/- per square yard was fixed and that the same was enhanced to Rs.290/- per square yard. It is further admitted that road in Sy.No.1166/A, 1168 and 1115/A was laid by the Municipal

Commissioner, Karimnagar at the same time and that both the roads are in T.P.No.11/1970.

Heard Sri P.V. Narayana Rao, learned counsel for the petitioner and Sri J. Kanakaiah, learned Standing Counsel for the Municipal Corporation of Karimnagar, which succeeded to respondent No.2 after filing of the writ petition.

From the facts narrated hereinabove, it could be seen that when the petitioners approached this Court by filing Writ Petition 8596 of 1992, a categorical finding was recorded by this court in its order dated 16.02.1993 to the effect that report of the Assistant Director of Survey and Settlement shows that the road is passing through the petitioners' land. After disposal of the said writ petition, the Revenue Divisional Officer, Karimnagar, conducted a spot inspection along with the Deputy Survey Inspector to verify whether the claim of the petitioners' that the road was laid on the land belonging to them in Sy.Nos.1166 and 1168 or not and after such inspection he addressed letter dated 13.08.1993 to respondent No.3, wherein he has reported in unequivocal terms that the Karimnagar Municipality has laid road over an extent of Ac.1.14 guntas of land in Sy.Nos.1166 and 1168. He made a request in the said letter to the Collector to provide necessary funds to initiate proposals for acquisition, but respondent No.3 having referred to the said report of the Revenue Divisional Officer, however, rejected the claim of the petitioners.

A reading of the impugned memo discloses that the petitioners' request for initiation of land acquisition proceedings was rejected on two grounds, namely, that as per partition deed dated 01.04.1976 executed among the brothers, petitioners are not the owners and that no new road was formed as stated by the petitioners, but the existing road was developed by metalling.

On a careful consideration of the impugned memo and the material on record, I am of the view that both the reasons given by

respondent No.3 are wholly unsustainable. In the earlier writ petition, namely, Writ Petition No.8596 of 1992, respondent No.3 did not appear to have taken any objection regarding the lack of title in the petitioners. The order under challenge does not disclose that who produced the partition deed before respondent No.3 and whether he had put the petitioners to notice about the alleged partition deed. He has not discussed in his order who are the parties to the alleged partition deed dated 01.04.1976 and the property in dispute fell to the share of which of the parties to the alleged partition deed. Though his order is specifically under challenge, respondent No.3, for the reasons best known to him, has not filed any counter affidavit to substantiate what he has mentioned in his order dated 23.11.1993. Therefore, this reason given in the order appears to me to be specious and unsustainable.

As regards the second reason, namely, that no new road was formed, but the existing road was developed by metalling, the same is in the teeth of the report of the Revenue Divisional Officer in which he categorically mentioned that over an extent of Ac.1-14 guntas of land in Sy.Nos.1166 and 1168, road has been laid by the Karimnagar Municipality. Apart from the same, as already noted, in the counter-affidavit filed on behalf of the Karimnagar Municipality, the Commissioner categorically admitted that road in Sy.Nos.1166/A, 1168 and 1115/A was laid and that on the directions issued by this Court in Writ Petition No.5630 of 1980, land acquisition proceedings were initiated in respect of the land comprised in Sy.No.1115/A, which includes enhanced compensation was paid to its owner by name Md. Dulekhan. In the face of these admissions, the reason given by respondent No.3 that no road was laid, but the existing road was developed by

metalling looks to be a travesty of truth and at any rate it is in direct conflict with the admission made by the Commissioner, Karimnagar Municipality in his counter-affidavit.

For the aforementioned reasons, the writ petition is allowed and memo dated 23.11.1993, impugned in this writ petition, is set aside. Respondent Nos.1 and 3 are directed to take immediate steps for initiating the proceedings under the Act and complete the same within a period of four months from the date of receipt of a copy of this order.

As a sequel to disposal of the writ petition in the manner indicated above, WPMP.No.9022 of 2000 filed by the petitioners for interim relief is disposed of as infructuous.

_____

C.V. NAGARJUNA REDDY, J

Date: 14.11.2007
ES